IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5926 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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BARODA EDUCATION SOCIETY

Versus

BARODA MUNICIPAL CORPORATION

Appearance:

1. Special Civil Application No. 5926 of 1993

MR KH KAJI for Petitioner No. 1

MR PRANAV G DESAI for Respondent No. 1-2

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 23/08/2001

ORAL JUDGEMENT

I have heard Mr.K.H.Kaji, learned Counsel appearing on behalf of the petitioner. I have also heard Mr.P.G.Desai, learned Counsel appearing on behalf of the respondents.

The present case involves a very simple question. It is alleged by the petitioner that the Baroda Municipal Corporation issued a notice for sale by auction of certain lands on 12-1-1993 and the auction was held on 18-1-1993. The learned Counsel for the petitioner draws my attention to the Page 25 of the notice, wherein it has been indicated that the minimum bid price for the land per sq.mtr. will be Rs.3.50. The learned Counsel for the petitioner submits that the petitioner offered the highest price of Rs.401/- per sq.mtr. and accordingly the petitioner is entitled to get the land from the Corporation on the basis of its highest bid price.

The learned Counsel for the petitioner further draws my attention to the resolution taken by the Standing Committee. The decision of the Standing Committee taken on 16-4-1993 has been transcribed and it appears that the Standing Committee recommended to the General Body for acceptance of the offer of the petitioner, which is the highest bid at Rs.401/- per sq.mtr. However, the General Body of the Corporation on the same day rejected the recommendation of the Standing Committee. Therefore, there was no finality of the offer made by the petitioner in respect of the disputed property. The learned Counsel for the petitioner further submits that the General Body of the Corporation by a resolution delegated its power to settle the sale by auction of Municipal land to Educational Trust.

On a bare perusal of the resolution of the Standing Committee dated 16-4-1993, it appears that even if the Standing Committee is delegated the power of the General Body, the Standing Committee has not exercised its power and it has only recommended the offer made by the petitioner for approval by the General Body. Therefore, it cannot be said that the Standing Committee has taken its own decision as delegated Authority to finalise the contract of sale. Rather it has recommended to the General Body for approval of the price offered by the petitioner. Since the General Body has rejected the recommendation of the Standing Committee, I am of the view that no finality has been reached between the parties for sale of the Municipal land by auction and no contract for sale has been finalised.

Accordingly, I do not find any merit in the present petition and the same is dismissed. The learned Counsel for the petitioner, however, submits that at the time of passing of the interim order, the Court directed the respondents that the earnest money paid by the

petitioner be deposited with any of the Scheduled Bank, so that in case the petitioner fails in the petition, the petitioner may not have to lose the interest. The learned Counsel for the petitioner submits that according to the aforesaid order passed by this Court, the Corporation must have deposited the earnest money of the petitioner with the Scheduled Bank and since the petition is being rejected now by this Court, the petitioner is entitled to get the refund of the earnest money along with all interest that is accrued in the Scheduled Bank during this period. When the sale has not been finalised, I am of the view that the petitioner should be returned its earnest money along with interest within four weeks from the date of receipt of this order. Accordingly, the respondent Baroda Municipal Corporation is directed to refund the earnest money of the petitioner along with interest within aforesaid period without fail. The rejection of the petition will not debar the petitioner from applying afresh to the Corporation for allotment of the land in question.

Rule is discharged. No order as to costs.

23-8-2001 (P. K. Sarkar, J.)

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